

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL ST.NO.44247 OF 2002**

Smt.Parvatabai D/o Bhimsha
Waghmode and others

...Appellants

VS.

Chandu Balu Waghmode & Others

...Respondents

Mr.Rupesh Bobade for the Appellants

Mr.B.G.Vaidya for Respondent Nos.1 to 8.

CORAM: A.S.OKA, J.

DATE : OCTOBER 30, 2007.

P.C.:

1. Heard the learned counsel for the Appellants. The Appellants have taken an exception to the Judgment and Decree dated 12th June 2002 passed by the District Court by which the decree passed by the trial court on 14th September 1999 was modified to the extent of shares of the parties. The Appellants are the original defendant Nos.1 to 3. The trial court decreed the suit by holding that the original plaintiff Nos.1 to 3 are entitled to 5/48th shares each in northern half of Gat No.237, Gat No.238 and 239 of Village Shingadgaon and the plaintiff Nos.7,8 and 9 were held entitled to 1/144th share each in the said lands. The Plaintiff Nos.1 to 3 were granted 1/9th share each in the suit property bearing House No.173/A and 174 of Village Shingadgaon. There were two appeals preferred before the District Court. One Appeal was preferred by the present Appellants and other Appeal was preferred by the original plaintiffs. The District Court dismissed the Appeal preferred by the present Appellants and partly allowed the Appeal preferred by the original

plaintiffs. The District Court held that the plaintiff Nos.1 to 9 have 1/2nd share collectively in the suit land and houses and the present Appellants have 1/2nd share in the suit land and the suit house property.

2. The grievance of the Appellants in the Second Appeal is that the courts below committed an error by holding that the suit properties were not partitioned earlier. The grievance is that the revenue record shows the factum of earlier partition.

3. I have carefully considered the submissions made by the learned Counsel for the Appellants. The Courts below have concurrently held that the suit properties are joint family properties. The courts below have held that the Appellants have failed to prove that there was a prior partition in the year 1929. Perusal of the findings recorded by the Appellate Court shows that the same are purely findings of fact recorded on the basis of the oral and documentary evidence on record. The Appellate Court has considered the entire oral and documentary evidence on record and also considered the theory of partition. Considering the relationship between the parties, no fault can be found with the shares determined by the Appellate Court.

4. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE